

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

LELAND CHRISTOPHER JOHNSON,	)	CASE NO. 5:06 CV 2256
et al.,	)	
	)	
PETITIONERS,	)	JUDGE SARA LIOI
	)	
vs.	)	
	)	
MICHELE EBERLIN, Warden, et al.,	)	
	)	<b>MEMORANDUM OPINION</b>
RESPONDENTS.	)	
	)	

This matter is before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge William H. Baughman, Jr. (Doc. No. 10.) Petitioner has filed objections to the R&R. (Doc. No.11.)

Having reviewed *de novo* those parts of the R&R which have been properly objected to, *see* Fed. R. Civ. P. 72(b)(3), for the reasons set forth below, the R&R is **ACCEPTED** and this petition is **DISMISSED** as untimely.

In May 2005, Leland C. Johnson and his wife, Sonya A. Johnson, were each indicted on two counts of child endangering. Each entered pleas of not guilty and, following plea negotiations, each agreed to plead guilty to the charged offenses in return for a recommendation of concurrent six year prison terms for each defendant. They were sentenced on July 27, 2005 and neither filed a direct appeal.

Under 28 U.S.C. § 2254(d)(1), a petition for writ of habeas corpus must be filed within one (1) year of “the date on which the judgment became final by the conclusion of direct

review or the expiration of the time for seeking such review [ . . . ].” This limitations period can be tolled during the pendency of any “properly filed” application for state post-conviction relief.

In this case, the state court conviction was final for purposes of federal habeas relief on or about August 26, 2005. Petitioners filed their petition for writ of habeas corpus on September 19, 2006. Therefore, unless there is some reason for equitably tolling the one-year statute of limitations, this petition must be denied.

Although each of the Johnsons filed *pro se* petitions for post-conviction relief, asserting *Blakely* violations, *see Blakely v. Washington*, 542 U.S. 296 (2004), the petitions were untimely and, therefore, do not provide a reason for equitable tolling of the one-year limitations period.

Accordingly, having given *de novo* review, the Court **ACCEPTS** the R&R and the petition for writ of habeas corpus is **DENIED**.

**IT IS SO ORDERED.**

Dated: December 30, 2008

  
\_\_\_\_\_  
**HONORABLE SARA LIOI**  
**UNITED STATES DISTRICT JUDGE**